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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: CC Docket No. 94-54
RM-8012
Reply Comments of the American Mobile
Telecommunications Association, Inc.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Reply Comments in the above-referenced proceeding.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,

Elizabeth R. Sachs
Elizabeth R. Sachs (cls)

ERS:cls

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to) RM-8012
Commercial Mobile Radio Services)

To: The Commission

**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.^{1/} The record in this proceeding supports the Commission's tentative conclusion that equal access requirements should not be expanded to include all providers in the increasingly competitive Commercial Mobile Radio Service ("CMRS") marketplace. The comments also confirm that the relationship between the monopoly wireline local exchange carriers ("LECs") and CMRS operators should be governed by principals of nondiscriminatory access and mutual compensation. Finally, there is virtual unanimity that it would be premature for the FCC to mandate CMRS-to-CMRS interconnection obligations at this stage in the industry's development.

^{1/} Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (adopted June 9, 1994 and released July 1, 1994) ("NPRM," "NOI" or "Notice").

I. THE RECORD EVIDENCES NO PUBLIC INTEREST BENEFIT FROM IMPOSITION OF EQUAL ACCESS OBLIGATIONS ON THE COMPETITIVE CMRS MARKETPLACE

In the Notice, the Commission tentatively concluded that CMRS providers should not be subject to the full range of equal access requirements currently imposed on those LECs which are subject to the Modified Final Judgment which governs the divested Bell System.^{2/} The agency properly determined that obligations necessary to ensure nondiscriminatory access for all interexchange carriers ("IXCs") to the monopoly, local wireline network in the post-divestiture environment were not necessarily appropriate in the vigorously competitive CMRS marketplace where no participant controls a bottleneck facility.

AMTA agreed with the FCC's assessment in its Comments in this proceeding. The Association noted that, unlike the local loop, the wireless marketplace is diverse and competitive; it does not present any participant with a comparable opportunity for anti-competitive behavior. AMTA Comments p. 5. For this reason, AMTA suggested that the public interest would be best served if the FCC imposed no equal access requirements on CMRS providers, rather than adoption of even a streamlined regulatory scheme. Id.

The majority of commenting parties agreed with AMTA's position. The record in this proceeding is essentially devoid of evidence that the very substantial costs of mandating equal access in this marketplace are outweighed by any concomitant benefit to the public. A compelling argument has been made that competition will more likely

^{2/} United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983) ("MFJ").

be hindered than promoted by imposition of any equal access requirements.^{3/}

Those parties which support equal access requirements across the broad gamut of CMRS services do so primarily on the basis that it is demanded by regulatory parity, rather than because of its efficacy as a competition-enhancing regulatory tool.^{4/} Most are LECs governed by the MFJ whose cellular operations are already subject to the full range of these requirements.^{5/} Their "comparability" argument is neither surprising nor compelling. The anti-competitive opportunities available by virtue of control of the local monopoly telephone network which prompted adoption of the MFJ requirement arise only with RBOC-related entities. AMTA takes no position on the need to maintain those restrictions in the wireless environment. It may be that this marketplace is sufficiently competitive, and the relationship of these companies to the monopoly LECs sufficiently attenuated that this MFJ obligation should be removed. If so, that matter should be addressed directly, not used as a predicate for extending a potentially unnecessary requirement to include those CMRS providers which have neither control of bottleneck facilities nor market power.

This position is recognized even by some RBOCs whose cellular subsidiaries are

^{3/} See, e.g., Comments of Alltel Mobile Communications, American Personal Communications, CTIA, Comcast Corporation, Dial Page, Inc., NABER, Nextel Communications, OneComm Corporation, and the Southern Company.

^{4/} See, e.g., Comments of Ameritech, Bell Atlantic Companies, and Bell South Corporation et al.

^{5/} Not surprisingly, equal access is also supported by most IXCs who apparently assume that they can only be advantaged by universal extension of these obligations, without any cost to them. See, e.g., Allnet Communications Services and LDDS Communications, Inc.

subject to the equal access requirements. For example, Nynex Corporation ("Nynex") noted that the marketplace will ensure that companies satisfy customer demand for availability of alternative interexchange carriers. Nynex Comments p. 5. Similarly, Southwestern Bell Corporation ("SBC") stated that equal access obligations were created for the landline network and have no place in the wireless market. SBC Comments. While both companies also argued that, if maintained at all, the requirement should be universal throughout CMRS, their support for this approach is grounded entirely in the desire to preserve competitive marketplace positions, not in any analysis of how equal access serves the public interest in the CMRS environment. Without record evidence that competition, rather than individual competitors, will benefit from extension of the equal access requirements to all CMRS providers, no such obligation should be adopted.

AMTA also explained in its Comments that, should the FCC nonetheless adopt equal access requirements for all CMRS services, those obligations should be narrowly tailored to promote vigorous competition and must be phased in to permit the necessary equipment modifications. AMTA Comments pp. 9-11. At the outset, the Association urged the Commission to exempt traditional SMR operators from an obligation which, because of its additional cost and complexities, would virtually ensure that such providers would drop the interconnection option from their offerings, thereby reducing alternative sources for that service. AMTA Comments pp. 7-9. These recommendations were endorsed by numerous parties, particularly those whose regulatory status has been reclassified from private to CMRS.^{6/}

^{6/} See, e.g., Comments of Dial Page, Inc., NABER, Nextel and OneComm.

Additionally, the Association explained that equipment currently available even to so-called ESMR operators, a service which the FCC has characterized as broadband and thus comparable to cellular and PCS, is not capable of permitting equal access. AMTA Comments p. 10. The Commission must provide a reasonable period of time for incorporation of the necessary technical capabilities in such systems, or it will effectively dictate a several year delay in their implementation. Since Congress has already determined that these reclassified systems are entitled to a three-year transition period before assuming CMRS obligations, the FCC, at a minimum, should adopt a co-terminous period for purposes of equal access obligations. This approach represents the minimum necessary to balance the FCC's desire to promote ubiquitous access to all communications networks with the practical realities of an evolving marketplace. In fact, as noted in AMTA's Comments, a preferable plan would be to delay these obligations until the end of the transition period to expanded Feature Group D Carrier Identification Codes which would avoid the substantial, unnecessary system reconfiguration costs which otherwise will be incurred. AMTA Comments pp. 11-12.

II. THE COMMISSION'S RULES SHOULD ENSURE NONDISCRIMINATORY INTERCONNECTION ARRANGEMENTS BETWEEN LECS AND CMRS PROVIDERS

In its Comments, AMTA recommended that the FCC retain its current system of good faith negotiations between LECs and CMRS operators, but suggested that the resulting contracts be filed with the Commission for oversight purposes. AMTA Comments pp. 12-14. The Association noted that tariffs might better ensure

nondiscriminatory treatment for new market entrants, but determined, on balance, that a less burdensome approach should be used unless and until a problem was identified.

Virtually all commenting parties urged the FCC to permit the use of contracts, rather than tariffs, to govern the arrangements between these entities. They agreed with the Association that reduced regulatory oversight is preferable as long as the rights of all parties are accommodated. While AMTA believes that this objective will most likely be accomplished if the LECs must disclose on what terms and conditions they provide service to all competing entities, the Association is not adverse to continuation of current practices with the understanding that the Commission will adopt more stringent requirements should problems arise in the future.

The goal of nondiscriminatory treatment also requires adoption of mutual compensation provisions for interconnection arrangements between the LECs and CMRS providers. At present, wireless carriers are not necessarily able to require compensation from the LECs for landline calls which terminate on the wireless system, although LECs are able to collect for wireless calls which terminate on their networks. Thus, AMTA and other parties supported the Notice's position that mutual compensation between these classes of providers is appropriate and publicly beneficial.⁷¹

AMTA was also pleased to see that most commenting parties agreed with its assessment that adoption of any CMRS-to-CMRS interconnection requirements would be

⁷¹ See, e.g., Comments of Nextel.

premature.^{8/} While the Association recognizes the FCC's desire to promote the development of a seamless, nationwide "network of networks", the CMRS industry is still in a stage of infancy. It is currently dominated by the duopoly cellular operators, but competition will expand rapidly as ESMR, PCS and other wireless systems are implemented. It is not clear at this time to what extent these systems will enhance or even replace the local wireline network, or what the cost/benefit ratio of ensuring full interconnectivity among these systems might be to consumers. The Commission should defer any disposition of this issue until a more complete record can be developed.

III. CONCLUSION

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

^{8/} See, e.g., Comments of Alltel Mobile Communications, Bell Atlantic Companies, BellSouth, CTIA, Comcast Corporation, NABER, Nextel Corporation, and Southwestern Bell Corporation.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 13th day of October, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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